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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/719,263

11/21/2003

Edward Paul Carlin

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THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
WINTON HILL BUSINESS CENTER - BOX 161  
6110 CENTER HILL AVENUE  
CINCINNATI, OH 45224

EXAMINER

CHAPMAN, GINGER T

ART UNIT

PAPER NUMBER

3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

04/02/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/719,263

Applicant(s)

CARLIN, EDWARD PAUL

Examiner

Ginger T. Chapman

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 and 7-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 7-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 August 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 19 December 2006 has been entered.

### **Status of the claims**

Claims 1-4 and 7-12 are pending in the application.

### ***Claim Rejections - 35 USC § 102***

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 and 7-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Schoelling (US 2002/0151859 A1).

With regard to claim 1, Schoelling ('859) discloses a tampon (30) for feminine hygiene comprising an insertion end, a withdrawal end, a center region, a longitudinal axis and an outer surface (fig. 1), the tampon being comprised of compressed fibrous material [0009, 0031]; the outer surface (30) of the tampon comprises a plurality of recessed portions (42); each of recessed portions comprising a length dimension and a width dimension wherein the width dimension

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varies intermittently as measured along the length dimension (figs. 3, 4 (50, 42, 40); and all of the outer surface of the tampon is liquid-absorbing [0083].

With regard to claim 7, Schoelling ('859) discloses in Figures 3 and 4 the recessed portions are evenly spaced.

With regard to claim 8, Schoelling discloses the fibrous material of the tampon has an essentially uniform density over a cross-section of the tampon [0009].

With regard to claims 9 and 10, Schoelling discloses at [0009] the fibrous material of the tampon comprises a core which is highly compressed as recited in claim 10 and thus will have varying density over a cross-section of the tampon as recited in claim 9.

With regard to claim 11, Schoelling discloses the withdrawal end (34) comprises a withdrawal member (35).

With regard to claim 12, Schoelling discloses the withdrawal end further comprises a finger indent (48).

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schoelling (US 2002/0151859 A1) in view of Kollwitz et al (US 2003/0176845 A1).

With regard to claims 2-4, Schoelling discloses the invention substantially as claimed except for the largest width dimension is located in the insertion end. Schoelling at [0038] expresses the desire for a tampon that can be comfortably inserted into the body cavity of the user. Kollwitz et al, at [0002] expresses the desire and motivation for a tampon that can be comfortably inserted by the user and have enhanced absorption capabilities. As seen in Figure 1, Kollwitz teaches a tampon (20) where the largest width dimension is located in the insertion end

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(24) as recited in claim 2, and wherein the largest width dimension is located in the withdrawal end (30) as recited in claim 3, and the smallest width dimension is located in the center region (32) as recited in claim 4. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the tampon of Schoelling having the claimed width dimensions as taught by Kollwitz since Kollwitz states at [0002] that the advantage of forming the tampon with this design is that it renders the tampon easy to insert and enhances the fluid acquisition capabilities of the tampon.

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-4 and 7-12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 of copending

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Application No. 10/719,793. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims describe the substantially identical article.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### *Response to Arguments*

Applicant's arguments with respect to claims 1-4 and 7-12 have been considered but are moot in view of the new ground(s) of rejection.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 2005/0113780 A1: Gatto et al discloses in Figures 2 and 3 a tampon having a plurality of recessed portions, largest width dimensions located at the insertion and withdrawal ends and the smallest width dimension located in the center region.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginger T. Chapman whose telephone number is (571) 272-4934. The examiner can normally be reached on Monday through Friday 9:30 a.m. to 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ginger Chapman  
Examiner, Art Unit 3761  
03/28/07



TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

